Calendar No. 996

100TH CONGRESS
2d Session

SENATE

REPORT
100-549

CORRECTING HISTORICAL AND GEOGRAPHICAL OVERSIGHTS IN THE ESTABLISHMENT AND DEVELOPMENT OF THE UTAH COMPONENT OF THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION, TO SIMPLIFY THE BOUNDARIES OF THE GOSHUTE RESERVATION, AND FOR OTHER PURPOSES

SEPTEMBER 26, 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 2839]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 2839) to correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the Act, as amended, do pass.

The amendments are as follows:

On page 3, line 11, delete "(1)", and beginning on line 17, delete all after "mining laws of the" through page 4, line 4 and insert in lieu thereof "United States.".

On page 6, line 7, delete "United States, the" and insert in lieu thereof "United States as the result of an exchange of public domain land, the".

On page 6, beginning on line 18, delete section 5 in its entirety and renumber succeeding sections accordingly.

On page 8, lines 13–14, delete "Act, and any lands acquired pursuant to section 5, is" and insert in lieu thereof "Act is".

On page 9, line 9, delete "public domain" and insert "acquired".

On page 15, lines 7–8, delete "the southwest ¼, and the southwest ¼ of the northwest ¼" and insert in lieu thereof "and the southwest ¼."

At the end of the bill insert a new section as follows:

S313-73

SEC. 10. The conveyance of interests of the United States under sections 3 and 4 of this Act in lands located in Tooele County, Utah and of the lands in section 3(b) of this Act shall be subject to the payment by the Tribe of fair market value for those interests as determined by the Secretary.

PURPOSE OF THE MEASURE

The purpose of H.R. 2839 is to correct historical and geographical oversights in the establishment of the Utah component of the Confederated Tribes of the Goshute Reservation. The bill also provides for the transfer of certain parcels of land in trust to the United States for the benefit of the Confederated Tribes of the Goshute Reservation.

BACKGROUND

Originally, the Goshute Tribes occupied approximately 6 million acres of land located in the States of Nevada and Utah. However, most of the Indian Title to these lands was found to have been extinguished by January 1, 1875. Currently, the Goshute Indian Reservation is in the States of Nevada and Utah. The largest portion, about 80%, or 70,489 acres is located in the northeastern portion of White Pine County, Nevada which is about 100 miles northeast of Ely, Nevada. The remaining 20% or approximately 38,803 acres extends into the northwest corner of Juab and Tocele Counties, Utah located some 175 miles southwest of Salt Lake City, Utah.

Executive Order 1539 (May 29, 1912) and Executive Order 1903 (March 23, 1914) reserved from settlement, entry, sale, or other disposition, and set aside lands in Utah for the use and benefit of the Goshute and other Indians. Since issuance of the orders the lands have been administered as the Goshute Reservation.

However, the legal description of the lands in these executive orders contained an error which created a strip of land running through the middle of the reservation 1/4 mile wide and 7 miles long. This strip of land is currently owned by the United States and administered by the Bureau of Land Management. H.R. 2839 would change the status of the strip so as to make such land part of the reservation and provide that it be held in trust by the United States for the use and benefit of the tribe. The bill contains additional sections providing for the transfer of certain lands to trust and reservation status.

LEGISLATIVE HISTORY

H.R. 2839 passed the House of Representatives on November 16, 1987. A companion measure, S. 1687, was introduced by Senators Garn and Hatch on September 16, 1987. A hearing was held by the Subcommittee on Public Lands, National Parks and Forests on May 20, 1988.

At the business meeting on Wednesday, September 14, 1988, the Senate Committee on Energy and Natural Resources ordered H.R. 2839, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on Wednesday, September 14, 1988, by unanimous vote of a quorum present recommends that the Senate pass H.R. 2839 if amended, as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum	
Mr. Melcher	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski*	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of H.R. 2839, the Committee adopted several technical and conforming amendments suggested by the Department of the Interior at the Subcommittee hearing. The Committee also made three substantive changes in the House passed measure.

First, the Committee deleted a provision in the House bill, as well as S. 1687, which would have prevented the holders of certain valid mining claims to proceed to patent.

Secondly, the Committee deleted the section in the House passed bill (Section 5) which provided new acquisition authority for the Secretary to acquire additional lands for the use and benefit of the Tribe. At the Subcommittee hearing, the Department testified that it already had similar authority under 25 U.S.C. 464, 465, 467, and 2201 through 2211, and that "in some respects section 5 is more restrictive than current authorities". The Committee deleted this section, leaving the current authorities unaltered.

Finally, the Committee added language, also recommened by the Department, requiring the payment of fair market value for the conveyance of certain lands authorized to be transferred under this bill.

SECTION-BY-SECTION ANALYSIS

Section 1

Subsection (a) provides that the lands described in the Executive Orders of May 29, 1912 and March 23, 1914 are hereby declared to be held in trust by the United States for the use and benefit of the Confederated Tribes of the Goshute Reservation.

Subsection (b) provides that for the purpose of determining the water rights in the lands held in trust for the Tribe under subsection (a), such land shall be deemed to have been held in trust by the United States for the benefit of the tirbe as of the date of the respective executive orders or such earlier dates as may be indicated by law.

Section 2

Subsection (a) provides that except as otherwise provided in this section, nothing in this Act shall be construed to deprive any person of any valid existing right or interest which such person may have held in the lands described in this Act on the date of enactment.

Subsection (b) provides that upon the effective date of this Act, all valid rights-of-way, leases, permits and other land use rights (except mining claims) existing in the lands described in this Act shall cease to be the responsibility of, or insure to the benefit of the United States and shall become the responsibility of the tribe, or the Secretary of the Interior, as trustee. The tribes, or the Secretary of the Interior, as trustee, shall succeed to the interests of the United States and shall maintain those interests under the same terms and conditions as they were maintained by the United States.

Subsection (c) provides that within two years after the date of enactment of this Act, the Secretary shall determine the validity of all mining claims on the lands within the exterior boundaries of the reservation. Mining claims determined to be valid shall be maintained in compliance with the mining laws of the United States.

Section 3

Subsection (a) provides that certain lands described in section 10(a) consisting of about 1,753 acres are hereby declared to be part of the reservation and held in trust by the United States for the benefit of the tribe. These are Federal lands which were unintentionally omitted from inclusion in the reservation in the Executive Order of 1914.

Subsection (b) provides that certain lands described in section 10(b) consisting of about 80 acres are hereby declared to be part of the reservation and held in trust by the United States for the benefit of the tribe. Title to these lands is presently held by the United States and is located within the boundaries of the reservation but these lands are not presently held in trust for the benefit of the tribe.

Subsection (c) provides that certain lands described in section 10(c) and consisting of about 5,075 acres are hereby declared to be part of the reservation and held in trust for the benefit of the tribe.

These lands are currently held in trust but are not part of the reservation.

Subsection (d) provides that all rights of the United States in and to the subsurface estates described in section 10(d) are hereby declared to be held by the United States for the benefit of the tribe and to be part of the reservation.

Subsection (e) authorizes the Secretary to accept a conveyance by the tribe of all lands described in section 10(e) consisting of about 5 acres of land. Such land if accepted shall be held in trust and be part of the reservation. These lands consist of a tribal cemetery.

Subsection (f) provides that all rights of the United States in the lands described in section 10(f) and consisting of about 360 acres hereby declared to be held in trust by the United States for the benefit of the tribe and to be part of the reservation. These lands are lands surrounding the tribal cemetery.

Subsection (g) provides that within 90 days after the date of enactment of this Act, the Secretary shall publish a legal description of the lands added by this Act to the reservation in the *Federal Register* and shall maintain a map of these lands on file in the Bureau of Indian Affairs land title record office having jurisdiction over these lands.

Section 4

This section provides that if any tract of lands currently held by the State of Utah described in section 10(g)(1) and consisting of about 860 acres ever vests in the United States, such lands shall be held in trust for the tribe and be part of the reservation.

This section also provides that if any of the subsurface estate of lands described in section 10(g)(2) and consisting of about 1275 acres ever vests in the United States, such subsurface interests shall be held in trust for the benefit of the tribe and shall become part of the reservation.

Section 5

This section provides that the lands described in section 10(h) shall not be conveyed by any Federal agency without the approval of the Secretary. Such approval shall not be given until the Secretary has considered the desire and need of the Tribe for such lands. These lands are adjacent to the reservation and consist of about 640 acres.

Section 6

This section extinguishes the reserved right of the United States to construct ditches and canals on lands described in this Act.

Section 7

This section provides that lands declared to be held in trust under this Act and added to the reservation shall be subject to the laws of the United States that are generally applicable to Indian lands.

Section 8

This section defines the terms "Reservation", "Secretary", and "Tribe" for the purposes of this Act.

Section 9

This section gives the technical description of the lands referred to in the previous sections of the bill.

Section 10

This section provides for the payment to the United States of fair market value by the Tribe for certain of the lands authorized for conveyance pursuant to this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 21, 1988.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2839, an act to correct historical and geographical oversights in the establishement and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources, September 14, 1988.

Based on information provided by the Bureau of Land Management (BLM), CBO estimates that enacting this legislation would result in no significant cost to the federal government. H.R. 2839 would transfer roughly 7,000 acres of land currently owned by the federal government to the Confederated Tribes of the Goshute Reservation in Utah. These lands lie within or adjacent to the current boundaries of the reservation, and are currently managed by the BLM.

Enacting this legislation would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Carol Cohen, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying our H.R. 2839. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in adminstering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2839, as reported.

EXECUTIVE COMMUNICATIONS

On October 1, 1987, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 1687. These reports had not been recieved at the time the report on S. 1687 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF JOE C. CHRISTIE, ACTING DEPUTY TO THE ASSISTANT SECRETARY-INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR, ON S. 1687

Good morning Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1687, a bill "To Correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes."

We would have no objection to the enactment of S. 1687, if the amendments we recommend are adopted, including a requirement that fair market value be paid for conveyance of certain Federal interests.

S. 1687 would provide for the United States to hold certain lands in trust for the use and benefit of the Confederated Tribes of the Goshute Reservation and make those lands part of the Reservation. These lands include:

(a) Lands described and set aside for the Goshute and other Indians in Executive Order 1539 (May 29, 1912) and in Executive Order 1903 (March 23, 1914), comprising approximately 34,560 acres.

(b) Lands apparently unintentionally omitted from inclusion by Executive Order 1903 comprising approximately 1,753 acres of public domain lands in Juab County, Utah.

(c) Federal but non-Indian lands within the boundaries of the Executive Order 1539 and 1903 areas comprising 80 acres in Juab County, Utah.

(d) Lands held in trust for the tribe but not part of the reservation comprising approximately 5,075.69 acres in Tooele and Juab Counties, Utah.

(e) All right, title and interest of the United States in and to the subsurface estates in some 1,089 acres described in section 10(d). The surface estates are held in trust for the tribe by the United States.

(f) Lands owned by the tribe in fee comprising of approximately 5 acres of land used as a Goshute Tribal Cemetery in Tooele County, Utah.

(g) Federal lands surrounding the Goshute Tribal Cemetery comprising approximately 360 acres in Tooele County, Utah.

The Goshute Indian Reservation is in the States of Nevada and Utah. The largest portion, 70,489 acres, is located in the northeastern portion of White Pine County, Nevada which is about 100 miles northeast of Ely, Nevada. The remaining approximately 38,803 acres extends into the northwest corner of Juab and Tooele Counties, Utah located some 175 miles southwest of Salt Lake City, Utah.

Executive Order 1539 (May 29, 1912) and Executive Order 1903 (March 23, 1914) reserved from settlement, entry, sale, or other disposition, and set aside lands in Utah for the use and benefit of the Goshute and other Indians. Since issuance of the orders the lands have been administered as the Goshute Reservation. Section 1 of the bill would vest the Confederated Tribes of the Goshute Reservation with a trust title interest in their Executive Order lands. We believe that section 1 does not alter the current trust status of those lands or the priority date for the water rights involved. However, we have no objection to the provision.

Section 2 of the bill preserves existing rights in the lands covered by the bill. Among other things, section 2 continues existing leases and merely changes the lessor. We do recommend that section 2(b) be amended to clarify that the Secretary also has responsibility for the lands as trustee after the conveyance.

Sections 3(a) and 10(a) would provide that lands unintentionally omitted from inclusion in Executive Order 1903 be held in trust for the tribe as part of the reservation. Executive Order 1903 did not extend the boundaries all the way to the Utah-Nevada State line. This omission or oversight left a strip of land about 1 mile wide and 10–12 miles long between the western boundary of the reservation and the Utah-Nevada State line.

The Act of April 13, 1938 (52 Stat. 216), provided for a reservation in east central Nevada extending the eastern reservation boundary to the Nevada-Utah State line. The legislative history of the 1938 Act is unclear as to whether it was the intent of Congress to add this acreage to the existing Utah Goshute Reservation or to create a separate reservation for the Goshutes in Nevada. This reservation area has been administered as part of the Goshute Reservation in Utah and is separated from the rest of the reservation by the thin strip of Federal land consisting of approximately 1,753 acres on the Utah side of the State line. This leads us to believe that it was by error that this small strip of land was omitted from the Executive Order 1903. Sections 3(a) and 10(a) of S. 1687 would transfer this land

in trust for the Confederated Tribes and add it to the Goshute Reservation.

On October 16, 1962, the Indian Claims Commission found (37 Ind. Cl. Comm. 41) that the Goshute Tribes had established aboriginal title to an area of approximately 5,952,000 acres located in the States of Nevada and Utah including the lands described in S. 1687. The Commission subsequently found that Indian Title had been extinguished as of January 1, 1875 and the Goshutes (Goshute and Skull Valley Tribes) were awarded a total of $7,300,000 ($5,142,420 was Goshute's final share of the award). The land values established by the ICC indicated a value of $1.00 per acre for Sagebrush-grass to $.50 per acre for desert shrub at the time of taking in 1875. The ICC found that the tribe's aboriginal title to some 128,196 acres was not extinguished and no compensation was provided for that land including the 1,753 acres strip. Therefore, we are not asking for compensation for this land.

In 1921, pursuant to the General Allotment Act, 160 acres of the Executive Order 1903 Reservation land was allotted to the heirs of Pon Dugan, a Goshute Indian. A few years later the Department of the Interior discovered that the land it had allotted included various agency buildings. In 1926 the Department reacquired 80 acres of the original allotment for agency purposes. The records show that these 80 acres located in the middle of the reservation were reconveyed by the heirs of Pon Dugan to the United States. This land is presently vacant and is not being utilized. Sections 3(b) and 10(b) of S. 1687 would declare the land to be held in trust for the tribe. The remaining 80 acres of the original allotment which is part of the existing reservation is being held in trust for the heirs of Pon Dugan and would not be affected. Although the 80 acres being conveyed to the tribe was purchased by the United States, we do not believe that the tribe should be required to pay fair market value for it because under 40 U.S.C. 483(a)(2) excess Federal real property located within an Indian reservation is to be taken into trust by the Secretary for the tribe occupying the reservation without cost to the tribe.

Through the 1930's and 1940's the United States acquired land within or adjacent to the Goshute Indian Reservation for the Tribe. These lands consisting of approximately 5,075 acres were taken in trust for the Tribe but never proclaimed as part of the reservation although this could be done under the provision in 25 U.S.C. 467. Sections 3(c) and 10(c) of S. 1687 would accomplish this.

In addition, the surface of some 1,089 acres was acquired by the United States in trust for the tribe. This land is adjacent to other tribal trust land. The subsurface title had previously been reserved by the United States. Sections 3(d) and 10(d) would declare these subsurface interests also held in trust for the tribe. Most of this land is in the same situation as the 1,753 acres above for which the tribe was

not compensated in the ICC award. Therefore, we believe the tribe should only have to pay for the subsurface rights to the two parcels not in that area.

Under the Cemetery Act of March 1, 1907 (34 Stat. 1052; 43 U.S.C. 682) the Goshute Tribe acquired a cemetery consisting of 5 acres. These lands are owned by the Tribe in fee and are subject to State and local taxation. This land borders tribal trust land and Federal land. Under sections 3(e) and 10(e) of the bill, the 5 acre parcel would be added to the reservation. We have no objection to adding this small tribal cemetery to the reservation because it is used for the benefit of tribal members and not for commercial purposes.

Sections 3(f) and 10(f) of the bill would add some 360 acres of public domain lands which border the Indian cemetery to the reservation. We believe that it would be appropriate for the tribe to pay fair market value for this land.

We would like section 3(g) of the bill amended to provide that the map of the lands added to the reservation be on file in the BIA land records office having jurisdiction over the lands. This will provide better access to those interested.

The enactment of S. 1687 would not only consolidate the landholdings of the Goshute Tribe but would also provide the Tribe with a larger land base to improve the economy of the Tribe and its members through farming, grazing and recreation. Such development would benefit the Indian and non-Indian community. It is our understanding that the public domain land described in section 10 of S. 1687 is characterized as grazing land valued at $35 to $50 per acre.

We understand that sections 4 and 10(g) of the bill are intended to provide that if certain interests in land owned by the State of Utah but surrounded by the Goshute Reservation are acquired through exchange with the tribe or the Bureau of Land Management, the title shall be taken in trust by the United States for the Goshute Tribe and the land added to the reservation. Section 4(a) should be amended to apply only to public domain land. As currently written, it could prevent a Federal agency from acquiring land in that area for use by that agency.

Section 5 provides land acquisition and exchange authorities for the tribe which are similar to existing authorities available to the tribe under the provisions in 25 U.S.C. 464, 465, 467, and 2201 through 2211. In some respects section 5 is more restrictive than current authorities and we believe it should be amended to state that section 5 is in addition to other authorities. Section 7 of the bill would extinguish any right of the United States to construct ditches and canals on land acquired under section 5. We do not believe that section 7 is intended to preclude the possibility of the tribe wanting to irrigate these lands

in the future and we suggest that the Committee so indicate in its report on the bill.

Sections 6 and 10(h) would require the Secretary to consider the desires and needs of the tribe before approving the disposal of a certain 640 acres of Federal land adjacent to tribal lands.

Section 8 states that the land taken in trust under the bill are subject to the same Federal laws that apply to the "lands comprising the Reservation of the Tribe on the day of the enactment of this Act." This is unnecessary.

Section 9 provides definitions for the bill and we have no objection to them.

To correct errors in the land descriptions contained in section 10 of the bill and to resolve other concerns that I have described, we recommend that the bill be amended as we suggest in the attached list of amendments.

We note that one of the amendments to the House-passed companion bill H.R. 2839 to correct the land description for the Federal lands surrounding the Goshute Tribal Cemetery is incorrect. This amendment would unintentionally omit 160 acres and would duplicate a 10-acre parcel land description. The land as described in section 10(f) of S. 1687 is correct and should not be amended. However, we do agree with the other three amendments to the land description adopted by the House which are included in our attached list of suggested amendments to S. 1687.

We also note that H.R. 2839 includes our amendments numbered 1, 2, 4, and 6 on the attachment to this statement. It does not include amendments numbered 3, 5, and 7 which we recommend that the Senate adopt.

This concludes my prepared statement and I will be pleased to answer any question that the Committee may have.

DEPARTMENT OF THE INTERIOR

Recommended amendments to S. 1687:

Amend section 2(b) by inserting before the period at the end of the first sentence the following: "or the Secretary as trustee" and by inserting after "Tribe" in the second sentence the following "or the Secretary as trustee".

Amend section 3(g) by deleting the last sentence and inserting in lieu thereof:

> A map depiciting the lands added to the Reservation by this Act shall be on file and available for public inspection in the Bureau of Indian Affairs' Land Title Record Office having jurisdiction over these lands.

Section 4(a) is amended by inserting after "United States" the first time the term appears the following: "as the result of an exchange of public domian land."

Section 5 is amended by adding the following new subsection at the end thereof:

(f) The provisions of this section are in addition to and not in derogation of any authority under any other Federal law.

A new section 11 should be added to the bill to read as follows:

The conveyance of interests of the United States under sections 3 and 4 of the Act in lands located in Tooele County, Utah and of the lands in section 3(b) of this Act shall be subject to the payment by the Tribe of fair market value for those interests as determined by the Secretary.

Technical corrections to the land descriptions in section 10:

On line 7, page 10 the word "southeast" is replaced with the word "southwest" in each instance.

On line 5, page 13, the word "southeast" is replaced with the word "southwest".

On line 24, page 13, insert the number "4" after the word "Section".

Also in section 10, page 9, line 9, we suggest that the words "public domian" be deleted and the word "acquired" be inserted in lieu thereof.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 2839, as reported.

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